

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LATEX GLOVES PRODUCTS	:	MDL DOCKET NO. 1148
LIABILITY LITIGATION	:	
	:	ALL CASES

CASE MANAGEMENT ORDER NO. 21
PLAN FOR RESOLUTION OF VARIOUS CATEGORIES OF MOTIONS

AND NOW, this ____ day of November, 1997, upon conference, the following is
ordered:

Motions will be resolved by the Court according to the following format:

**I. PHASE ONE - MOTIONS TO BE BROUGHT BEFORE THE CLOSE OF
MERITS DISCOVERY**

- A. Motions that, if granted, would affect the Court's exercise of jurisdiction, the number or identity of the parties, or the scope or nature of the MDL discovery proceedings should be decided by Judge Ludwig at the earliest possible stage of the litigation. The following motions fall into this category:
 - 1. All procedural motions the disposition of which will determine whether certain parties and/or claims are properly before the Court. For example:
 - a. Motion to dismiss for insufficiency of process under Fed.R.Civ.P. 12(b)(4);
 - b. Motion to dismiss for insufficiency of service of process under Fed.R.Civ.P. 12(b)(5);
 - c. Motion to dismiss under Fed.R.Civ.P. 12(b)(7) for failure to join a party under Rule 19;
 - d. Motion to add a third party under Fed.R.Civ.P. 14(a) or 14(b);
 - e. Motion to amend a pleading to add or subtract a claim or party under Fed.R.Civ.P. 15(a);
 - 2. Motion to dismiss for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1), including but not limited to motions to remand;

3. Motion to dismiss for lack of personal jurisdiction under Fed.R.Civ.P. 12(b)(2);
 4. Motion to dismiss for improper venue under Fed.R.Civ.P. 12(b)(3); or to transfer venue under 28 U.S.C. § 1404(a); and
 5. Motions regarding class action allegations, to the extent that any newly filed complaints contain class action allegations.
- B. A party intending to move to dismiss under Fed.R.Civ.P. 12(b)(6) for failure to state a claim must indicate in writing to the Court the basis for the proposed motion and why the Court should allow it to be filed. The Court will then either permit the party to move under Rule 12(b)(6) or instruct the party not to file a motion for that relief until after the close of merits discovery or such other time as may be designated by the Court.
- C. A party intending to file a motion for judgment on the pleadings under Fed.R.Civ.P. 12(c) must indicate in writing to the Court the basis for the proposed motion and why the Court should allow it to be filed. The Court will then either permit the party to move immediately for judgment on the pleadings or instruct the party that the motion may not be filed until after the close of merits discovery or such other time as may be designated by the Court, at which time the motion shall be converted to a motion for summary judgment under Fed.R.Civ.P. 56.
- D. Motions for a more definite statement under Fed.R.Civ.P. 12(e) and motions to strike under Fed.R.Civ.P. 12(f) are strongly discouraged. However, the Court may choose to hear such motions in appropriate cases, provided that the moving party explains to the Court in writing the basis for the motion and why the Court should allow it to be filed. The Court may then either permit the party to file the motion, deny the party leave to file the motion or order that the motion be heard and determined in the transferor court following remand.
- E. A motion whose filing has been delayed by reason of the Court's order as provided in paragraphs I.B, I.C. and I.D. above shall be deemed for purposes of timeliness to have been filed on the date that the party submitted to the Court the writing called for in those paragraphs.

II. PHASE TWO - MOTIONS TO BE BROUGHT FOLLOWING THE CLOSE OF MERITS DISCOVERY

- A. Defendants not dismissed in accordance with the “bright-line test” following the close of discovery related to product identification may move for summary judgment on the basis of insufficient evidence of product identification within 60 days following the close of merits discovery. The Court may either rule upon the motion or, if it chooses, remand the case including the motion to the transferor court, for determination by that court.
- B. Motions addressed to the merits of a specific claim or defense, including motions related to product identification, may be filed by any party within 60 days following the close of all merits discovery. The Court will either rule upon such a motion or, if it chooses, remand the case including the motion to the transferor court, for determination by that court.

Edmund V. Ludwig, S.J.

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